

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT D. SNYDER

Appeal No. 97-4097
Application 08/442,525¹

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, and
METZ and PATE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed May 16, 1995.

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This is an appeal from the examiner's refusal to allow claims 1, 3 through 7, 9 through 13, 15, 16, 21 and 22, as amended after final rejection. These are the only claims that remain in the application.

The invention is directed to a turbulence fluid display device which generates a pleasing continually changing visual fluid pattern. A further description of the claimed subject matter can be had by reference to the appealed claims appended to the appellant's brief.

The references of record relied upon by the examiner as evidence of anticipation and obviousness are:

Fleemin	4,490,931	Jan. 1, 1985
Muscat et al. (Muscat)	5,052,714	Oct. 1, 1991
Horiuchi	5,301,444	Apr. 12, 1994

THE REJECTIONS

Claims 1, 3, 4 and 15 stand rejected under 35 U.S.C. § 102(b) as anticipated by Fleemin.

Claims 5 through 7, 9, 16, 21 and 22 stand rejected under 35 U.S.C. § 103 as unpatentable over Fleemin in view of Horiuchi.

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Claims 10 through 13 stand rejected under 35 U.S.C.
§ 103 as unpatentable over Fleemin in view of Muscat.

A further understanding of the examiner's position
with respect to the rejections on appeal can be had by refer-
ence to pages 3 through 5 of the Examiner's Answer.

OPINION

We have carefully reviewed the rejections on appeal
in light of the arguments of the appellant and the examiner.
As a result of this review, we have reached the conclusion
that the applied prior art does not establish the anticipation
or obviousness of any claim on appeal. Therefore, the rejec-
tions on appeal are reversed. Our reasons follow.

Appellant argues on pages 5 and 6 of the brief that
the primary reference to Fleemin does not disclose a means for
automatically varying at least one of the direction of rota-
tion of the output shaft of the motor and the speed of rota-
tion of the output shaft between at least two states in a

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repeating, continuous cycle.² The examiner points to rheostat 48 as a means for controlling the rate of motor operation. We agree with appellant that the rheostat of Fleemin does not provide a means for automatically varying when this means-plus-function limitation is interpreted in light of appellant's specification and with regard to the equivalents of the described means therein. In this instance, the examiner can point to no structure in Fleemin similar to the timer and stepper controlled motor disclosed in appellant's specification and/or equivalents thereof, nor can the examiner point to any function in Fleemin that is similar to the function claimed by appellant. In fact, the examiner never makes any factual finding that Fleemin has a means for automatically varying as claimed in independent claim 1.

² We have construed the limitation in light of the apparatus for performing the function disclosed in appellant's specification and equivalents thereof. In re Donaldson Co., 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994).

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We have also reviewed the prior art teachings of Horiuchi and Muscat, but we find therein no teaching or suggestion that can supply the missing features we have pointed out with regard to Fleemin. Accordingly, we are constrained to reverse the rejections of all claims on appeal.

REVERSED

	HARRISON E. McCANDLISH)	
	Senior Administrative Patent Judge)	
)	
)	
)	BOARD OF
PATENT)	
	JAMES M. MEISTER)	APPEALS
AND)	
	Administrative Patent Judge)	INTERFER-
ENCES)	
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)	
	WILLIAM F. PATE, III)	
	Administrative Patent Judge)	
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